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| APPLICATION NO.             | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.     | CONFIRMATION NO. |
|-----------------------------|-------------|----------------------|-------------------------|------------------|
| 09/451,580                  | 11/30/1999  | DANIEL L. POOLE      | 3339-PA13               | 9240             |
| 757                         | 7590        | 04/21/2004           | EXAMINER                |                  |
| GENERAL NUMBER 00757        |             |                      | SMITH, JAMES G          |                  |
| BRINKS HOFER GILSON & LIONE |             |                      | ART UNIT                | PAPER NUMBER     |
| P.O. BOX 10395              |             |                      | 3723                    | 16               |
| CHICAGO, IL 60611           |             |                      | DATE MAILED: 04/21/2004 |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                   |                         |  |
|------------------------------|-----------------------------------|-------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b>            | <b>Applicant(s)</b>     |  |
|                              | 09/451,580                        | POOLE ET AL.            |  |
|                              | <b>Examiner</b><br>James G. Smith | <b>Art Unit</b><br>3723 |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 January 2004.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2,4-6,8-11,13-15,17,18,20-33 and 39-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,4-6,8-11,13-15,17,18,20-33 and 39-41 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 28 is finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim reclaims a notch that is already claimed in claim 26, from claim 28 depends.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4, 18, 20, 21, 24, 25, 30, 31 and 41 are finally rejected under 35 U.S.C. 102(b) as being clearly anticipated by any of Stratman, Sarvie(697) or Bothum as all show two single piece members with handle and jaw portions with a clamp bar on one member extending into an opening in the other member with the opening upper and lower surfaces providing a guiding means, and a brake lever pivotally engaged within a notch formed in the other member.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5, 6, 8-10, 14, 15, 17, 22, 23, 26-29, 32, 33, 39 and 40 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over any of Stratman, Sarvie(697) or Bothum in view of Wolff et. al..

Any of Stratman, Sarvie(697) or Bothum shows the claimed invention except for the use of a plastic material of construction. Wolff et. al. suggests that a pliers type of clamp can be made of a plastic material to allow it to be flexible. It would therefore be obvious to one skilled in the art at the time the invention was made to modify any of Stratman, Sarvie(697) or Bothum by making any of them of a plastic material to make them more flexible because Wolff et. al. suggests the use of such a material in the manufacture of clamps or pliers.

7. Claims 11 and 13 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over any of Stratman, Sarvie(697) or Bothum in view of Wolff et. al. as applied to claims 5, 6, 8-10, 14, 15, 17, 22, 23, 26-29, 32, 33, 39 and 40 above, and further in view of any of Hersey, McGuckin or Reiter.

Any of Stratman, Sarvie(697) or Bothum, as modified by Wolff et. al., shows the claimed invention except for the use of a spring biased jaw portion.

Any of Hersey, McGuckin of Reiter suggests that a clamp or pliers can have such a spring biased jaw portion to provide the tool with more flexibility. It would therefore be obvious to one skilled in the art at the time the invention was made to modify any of Stratman, Sarvie(697) or Bothum by using a spring to bias a jaw portion because any of Hersey, McGuckin of Reiter suggests the use of such a spring to bias a jaw portion on the same type of tool.

#### ***Response to Arguments***

8. Applicant's arguments filed 04 January 2004 have been fully considered but they are not persuasive.

Applicant has argued that none of the primary references show a notch, however in Stratman, especially figures 4 and 5, there is clearly shown a locking lever 11 that is pivotally received within a "notch" 18. Sarvie clearly shows a "notch" in the member 84 in figure 13 and opening 29 in figure 1, which also receives the locking lever 85 or 30, respectively. In Bothum, clearly the U-shaped end portion 25 with opening 26 is a "notch" and it also receives the locking lever 27. Thus contrary to applicant's argument, each of the primary references show the use of a locking lever on a pliers tool that is pivotally received within a "notch" in one of the handles.

As the remaining arguments are solely based on applicant's assumption that the primary references do not have a "notch", the will fall within the above remarks.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James G. Smith whose telephone number is 703-308-1746. The examiner can normally be reached on M-Th (7:05- 4:35) Fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail, III can be reached on 703-308-2687. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3723

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James G. Smith  
Primary Examiner  
Art Unit 3723

jgs  
4/20/04